



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Durable, Inc.  
File: B-228911  
Date: November 3, 1987

### DIGEST

1. Where a bidder submits alternate bids that meet the specifications, the government is not precluded from evaluating and accepting the successful alternate bid even where the solicitation does not provide for or permit alternate bids.
2. A bid is not mathematically unbalanced unless the bid contains both understated prices for some work and overstated prices for other work.

### DECISION

Durable, Inc. protests the award of a construction contract to Artco Contracting, Inc. for airfield apron improvements at Wurtsmith Air Force Base, Michigan, pursuant to invitation for bids (IFB) No. DACA45-87-B-0061, issued by the Army Corps of Engineers, Omaha, Nebraska. Durable principally contends that Artco's bid was nonresponsive because Artco submitted alternate bids contrary to the express terms of the solicitation, and because Artco's low bid was mathematically and materially unbalanced.

We deny the protest.

The IFB required that the successful contractor remove existing concrete and asphalt paving at the airfield and place new 20-inch thick concrete slab paving along with a water line, storm drain, and a fuel system and line, and to perform related earthwork. The IFB's bid schedule called for bidders to submit prices as follows:

<u>Item No.</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Unit Price</u>	<u>Amount</u>
1.	Entire work complete excluding unit price items listed below	Job	L.S.	XXX	\$ _____

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2. Concrete Airfield Pavement  
(Excluding Cement and Fly Ash) 35,700 C.Y. \$\_\_\_\_\_ \$\_\_\_\_\_
- "Alternates" to Bid  
Alternate 1-item 3 or  
Alternate 2-items 3A  
and 3B
3. Portland Cement for  
Airfield Pavement 199,900 CWT \$\_\_\_\_\_ \$\_\_\_\_\_
- 3A. Portland Cement (Fly  
Ash Option) 174,900 CWT \$\_\_\_\_\_ \$\_\_\_\_\_
- 3B. Fly Ash 22,950 C.F. \$\_\_\_\_\_ \$\_\_\_\_\_
- [alternate 1] Basic Total Amount - Items  
1, 2, and 3 \$\_\_\_\_\_
- [alternate 2] Basic Total Amount - Items  
1, 2, 3A and 3B \$\_\_\_\_\_  
(with Fly Ash)

The solicitation stated that alternate bids would not be considered unless the solicitation authorized their submission. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.214-18 (1986). In this regard, the solicitation stated that bidders must "enter [prices only for] alternate 1 or alternate 2 of the bid schedule."

The solicitation also required the contractor, before commencing work, to submit information on the cement it proposes to supply, and to provide samples of its mix design.<sup>1/</sup> The solicitation did not require, but specifically permitted the contractor to use a water reducing admixture at no additional cost to the government if approved in writing by the contracting officer. It is well-known in the industry that use of a water reducing admixture significantly reduces the necessary amount of water and cement in a mix design without compromising the

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<sup>1/</sup> The amount of cement that will be required depends on the amount of concrete needed and the concrete mix design which is like a "recipe." There are countless variations of mix designs (i.e., the mix of aggregates, cement, and fly ash, if used) that a successful contractor could employ and still meet the specifications. Under the terms of the solicitation, the bidder's proposed mix design would have to be approved by a government laboratory prior to use.

strength of the concrete (the government estimate for cement in the bid schedule did not reflect the use of a water reducing admixture).

The following five bids were submitted in a timely manner and publicly opened:

<u>BIDDER</u>	<u>ALTERNATE 1</u>	<u>ALTERNATE 2</u>
Artco	\$5,477,825	\$5,481,686.50
Durable	5,480,051	
J.R. Heineman & Sons, Inc.	5,840,000	
R.C. Hendrick & Son, Inc.	7,627,254	
Waterland Trucking Services, Inc.	8,281,918	
Government Estimate	6,439,625	6,404,856.50

As reflected above, Artco was the only bidder to submit bids for both alternate 1 and alternate 2. The Army, following the denial of Durable's agency-level protest, awarded the contract to Artco on the basis of its alternate 1 bid. This protest to our Office followed.

First, Durable argues that Artco's bid was nonresponsive because Artco had submitted two alternate bids despite specific instructions to the contrary in the solicitation while other bidders had to make a "deliberate choice" between the two alternates. According to Durable, Artco's bid prejudiced other bidders because the Army's favorable consideration of the Artco bid "rewards the only bidder that did not play by the rules of the game." Durable notes that if Artco had complied with the solicitation's instructions and had chosen to bid on alternate 2 only, then Artco would not have been the low bidder. In short, Durable complains that it was not provided an equal opportunity to compete.

To be responsive, a bid must represent an unequivocal offer to perform the exact thing called for in the solicitation such that acceptance of the bid will bind the contractor in accordance with the solicitation's material terms and conditions. Hicklin GM Power Co., B-222538, Aug. 5, 1986, 86-2 CPD ¶ 153. We have also consistently held that even where a solicitation does not provide for alternate bidding,

but a bidder nevertheless submits a bid offering alternatives that meet the specifications, the government is not precluded from accepting one of the alternate bids that meets the solicitations's requirements. P&N Construction Co., Inc., 56 Comp. Gen. 328 (1977), 77-1 CPD ¶ 88 (solicitation required bid on one option only); L.B. Foster Co., B-222593, Aug. 18, 1986, 86-2 CPD ¶ 191 (no solicitation provision for alternate bidding); see also Educational Media, Inc., B-225457.2, May 12, 1987, 87-1 CPD ¶ 498.

Here, Artco, in its alternate 1 bid, unequivocally offered to perform the exact work required by the government without exception.<sup>2/</sup> Since the Army awarded the contract based on alternate 1 bids, on which all bidders competed, we think that Artco's alternate 2 bid did not detract from its unequivocal commitment under its alternate 1 bid. Simply stated, all bidders had a fair opportunity to submit their best prices for alternate 1. Accordingly, we uphold the Army's determination that Artco submitted a responsive bid on both alternate items despite the provision in the solicitation which stated that only one alternate bid should be submitted.<sup>3/</sup>

Second, Durable argues that the Artco bid for alternate 1 is mathematically and materially unbalanced, and should have been rejected for that reason. Of five bids received, bids for item 3 of the schedule (portland cement) ranged from a low of \$2.44 CWT for Artco to a high of \$3.52 CWT for the high bidder. The government estimate was \$3.75 CWT. Artco has admitted that its bid for item 3 "represents the cost of cement only" and does not contain other elements of required cement work like delivery and storage of the cement at the site. (The solicitation stated that the quantity of item 3 (portland cement) will be paid for at the contract unit

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<sup>2/</sup> Durable questions whether Artco submitted an unequivocal offer since the Army had to request verification of the Artco bid. We note that verification (to determine whether a mistake in bid exists) is a routine procedure that does not affect the validity of a firm's offer. See FAR, 48 C.F.R. § 14.406-1.

<sup>3/</sup> Contrary to Durable's suggestion, we also deem adequate the submission by Artco of one bid bond for its alternate bids since only one alternate bid would be in line for award and therefore one bid bond would provide the government with the necessary security. See generally FAR, 48 C.F.R. part 28.

price, which includes all costs of handling, hauling and storage at the site.) Thus, the record shows that Artco shifted a portion of the cement costs from item 3 to item 1 or item 2 of the bid schedule. Durable argues that Artco's admission that it shifted costs from item 3 to other items conclusively demonstrates that the Artco bid was mathematically unbalanced.

Further, Durable argues that the Artco bid is also materially unbalanced because the amount of cement that will be used will be significantly less than the government estimate reflected in the schedule for item 3 (a total of 199,900 CWT). According to Durable, this is because use of a water reducing admixture, a common practice in the industry, will significantly reduce the amount of cement per batch of concrete so that the government estimate is overstated. Durable contends, and we find, that a 2 percent reduction from the government estimate for cement would result in Durable being the low bidder at a total price of approximately \$5,463,000, given the unit prices bid by Artco and Durable for item 3. Durable concludes that the government estimate was not based on the best information available, that is, based on the use of a water reducing admixture.

We find no merit to these contentions. There is a twofold nature to bid unbalancing. First, the bid must be evaluated mathematically to determine whether each item carries its share of the cost of the work specified for that item as well as overhead and profit. If the bid is based on nominal prices for some of the work and enhanced prices for other work, it is mathematically unbalanced. The second part of the test is to evaluate the bid to determine whether there is reasonable doubt whether award to a bidder that has submitted a mathematically unbalanced bid will result in the lowest overall cost to the government. If there exists a reasonable doubt that award to a party that submits a mathematically unbalanced bid will result in the lowest overall cost to the government, the bid is materially unbalanced and cannot be accepted. All Weather Contractors, Inc., B-217242, July 23, 1985, 85-2 CPD ¶ 71. The key to this latter determination is the validity of the government estimate, for it is that estimate upon which bids are evaluated for cost impact. Thus, unless it can be shown that the government estimate is invalid,<sup>4/</sup> a low evaluated bid cannot be rejected merely because it is mathematically

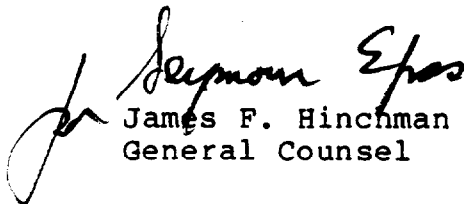
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<sup>4/</sup> The government estimate need only be based on the best available information. There is no requirement that the estimates be absolutely correct.

unbalanced. We generally have found material unbalancing only where it is shown that the government estimates are invalid. Id.

Here, we are not persuaded that the Artco bid is mathematically unbalanced. Despite the assertions by the protester to the contrary, a bid is not mathematically unbalanced unless it contains both understated prices for some work and overstated prices for other work. Microform Inc.--  
Reconsideration, B-208117.2, Sept. 27, 1983, 83-2 CPD ¶ 380;  
IMPISA International, Inc., B-221903, June 2, 1986, 86-1 CPD  
¶ 506. While Artco may have shifted some cement costs to other items of its bid, it does not appear from the record that this shifting of costs was other than insignificant or that it caused enhancement of other prices. Specifically, of five bids received, Artco submitted the second lowest bid for item 1 and the lowest bid for item 2. We therefore cannot conclude that Artco significantly overstated prices for work other than item 3. Thus, the bid does not appear to be mathematically unbalanced. Since we conclude that Artco's bid is not mathematically unbalanced, we need not consider Durable's assertion that Artco's bid is materially unbalanced.

The protest is denied.

  
James F. Hinchman  
General Counsel